

AMENDED IN SENATE APRIL 14, 2016

AMENDED IN SENATE MARCH 28, 2016

SENATE BILL

No. 1233

Introduced by Senator McGuire
(Coauthor: Senator Wolk)
(Coauthors: Assembly Members Levine and Wood)

February 18, 2016

An act to add Section 6588.8 to, and to repeal and amend Section 6586.7 of, the Government Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

SB 1233, as amended, McGuire. Joint powers authorities: Water Bill Savings Act.

Existing law, the Marks-Roos Local Bond Pooling Act of 1985, authorizes joint powers authorities, among other powers, to issue bonds and loan the proceeds to local agencies to finance specified types of projects and programs.

This bill would enact the Water Bill Savings Act, which would authorize a joint powers authority to provide funding for a customer of a local agency or its publicly owned utility to acquire, install, or repair a water efficiency improvement on the customer's property served by the local agency or its publicly owned utility. The bill would require the customer to repay the authority through an efficiency charge on the customer's water bill to be ~~imposed~~ *established* and collected by the local agency or its publicly owned utility on behalf of the authority pursuant to a servicing agreement. The bill would authorize the authority to issue bonds to fund the program. The bill would also make technical changes.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Water conservation efforts are indispensable to combating
4 the current and continuing drought conditions faced by the state
5 and advancing the state's greenhouse gas emission reduction goals.

6 (b) The up-front cost of acquiring, installing, and repairing water
7 efficiency improvements is often prohibitive and may prevent
8 customers from using them on residential, commercial, industrial,
9 agricultural, or other real property.

10 (c) Increasing customer water efficiency is a core component
11 of the provision of water utility service.

12 (d) *The conservation to be accomplished by efficiency*
13 *improvements is a core component of water utility service and*
14 *makes existing water supplies available for all water customers*
15 *by displacing demand for those supplies. Accordingly, a pledge*
16 *pursuant to paragraph (4) of subdivision (f) of Section 6588.8 of*
17 *the Government Code of water enterprise revenue as security for*
18 *bonds an authority has secured with a pledge of, and intends to*
19 *pay from, efficiency charges is an appropriate use of water*
20 *enterprise revenues as explained in Capistrano Taxpayers*
21 *Association, Inc. v. City of San Juan Capistrano (2015) 235*
22 *Cal.App.4th 1493, 1501-1504.*

23 SEC. 2. (a) It is the intent of the Legislature to make water
24 efficiency improvements more affordable and promote the
25 acquisition, installation, and repair of those improvements by
26 allowing local agencies to establish a mechanism by which they
27 may help their water customers to acquire, install, and repair water
28 efficiency improvements on privately owned customer properties.

29 (b) It is the intent of the Legislature that this act authorize the
30 development of a program to be established by a joint powers
31 authority that would provide a water customer with an alternative
32 and voluntary means to acquire, install, or repair water efficiency
33 improvements. It is further the intent of the Legislature that the
34 cost of this voluntarily acquired, installed, or repaired water
35 efficiency improvement be repaid through an efficiency charge

1 added to the water bill associated with the customer property upon
2 which the water efficiency improvement is located.

3 SEC. 3. Section 6586.7 of the Government Code, as added by
4 Section 4 of Chapter 723 of the Statutes of 2000, is repealed.

5 SEC. 4. Section 6586.7 of the Government Code, as added by
6 Section 1 of Chapter 724 of the Statutes of 2000, is amended to
7 read:

8 6586.7. (a) A copy of the resolution adopted by an authority
9 authorizing bonds or any issuance of bonds, or accepting the benefit
10 of any bonds or proceeds of bonds, except bonds issued or
11 authorized pursuant to Article 1 (commencing with Section 6500),
12 or bonds issued for the purposes specified in subdivision (c) of
13 Section 6586.5, shall be sent by certified mail to the Attorney
14 General and the California Debt and Investment Advisory
15 Commission not later than five days after adoption by the authority.

16 (b) This section does not apply to bonds:

17 (1) Specified in subdivision (c) of Section 6586.5.

18 (2) Issued pursuant to the Community Redevelopment Law
19 (Part 1 (commencing with Section 33000) of Division 24 of the
20 Health and Safety Code).

21 (3) To finance transportation facilities and vehicles.

22 (4) To finance a facility that is located within the boundaries of
23 an authority, provided that the authority that issues those bonds
24 consists of any of the following:

25 (A) Local agencies with overlapping boundaries.

26 (B) A county and a local agency or local agencies located
27 entirely within that county.

28 (C) A city and a local agency or local agencies located entirely
29 within that city.

30 (5) To finance a facility for which an authority has received an
31 allocation from the California Debt Limit Allocation Committee.

32 (6) Of an authority that consists of no less than 100 local
33 agencies and the agreement that established that authority requires
34 the governing body of the local agency that is a member of the
35 authority in whose jurisdiction the facility will be located to
36 approve the facility and the issuance of the bonds.

37 (7) Issued pursuant to Section 6588.8.

38 SEC. 5. Section 6588.8 is added to the Government Code, to
39 read:

1 6588.8. (a) This section shall be known and may be cited as
2 the Water Bill Savings Act.

3 (b) For purposes of this section, the following terms have the
4 following meanings:

5 (1) “Customer” means a person or entity that purchases water
6 from a local agency or its publicly owned utility and is billed for
7 the water by the local agency or its publicly owned utility.

8 (2) “Customer property” means residential, commercial,
9 industrial, agricultural, or other real property owned by the
10 customer.

11 (3) “Efficiency charge” means a charge on a customer’s water
12 bill that is paid by the customer directly to the local agency or its
13 publicly owned utility in order to pay for an efficiency
14 improvement pursuant to this section.

15 (4) “Efficiency improvement” means a water efficiency
16 improvement, as defined by the authority.

17 (5) “Financing costs” mean all of the following:

18 (A) An interest and redemption premium payable on a bond.

19 (B) The cost of retiring the principal of a bond, whether at
20 maturity, including acceleration of maturity upon an event of
21 default, or upon redemption, including sinking fund redemption.

22 (C) A cost related to issuing or servicing bonds, including, but
23 not limited to, a servicing fee, trustee fee, legal fee, administrative
24 fee, bond counsel fee, bond placement or underwriting fee,
25 remarketing fee, broker dealer fee, independent manager fee,
26 municipal adviser fee, accounting report fee, engineering report
27 fee, rating agency fee, and payment made under an interest rate
28 swap agreement.

29 (D) A payment or expense associated with a bond insurance
30 policy, financial guaranty, or a contract, agreement, or other credit
31 enhancement for bonds or a contract, agreement, or other financial
32 agreement entered into in connection with a bond.

33 (E) The funding of one or more reserve accounts related to a
34 bond.

35 (6) “Local agency” means a “local government” as defined in
36 subdivision (b) of Section 1 of Article XIII C of the California
37 Constitution.

38 (7) “Publicly owned utility” means a utility furnishing water
39 service to customers that is owned and operated by a local agency
40 or a department or other subdivision of a local agency and includes

1 any successor to the powers and functions of the department or
2 other subdivision.

3 (8) “Servicing agreement” means an agreement between a local
4 agency or its publicly owned utility and the authority for the
5 collection of the efficiency charge, pursuant to which the local
6 agency or its publicly owned utility acts as a servicing agent for
7 purposes of collecting the efficiency charge for the authority.

8 (c) (1) Notwithstanding any other law, if the requirements of
9 paragraphs (2) and (3) are met, an authority may provide funding
10 for a customer of a local agency or its publicly owned utility to
11 acquire, install, or repair an efficiency improvement on a customer
12 property served by the local agency or its publicly owned utility.

13 (2) (A) The authority, by resolution, establishes or extends a
14 program to provide funding for a customer of a local agency or its
15 publicly owned utility to acquire, install, or repair an efficiency
16 improvement on a customer property served by the local agency
17 or its publicly owned utility. The resolution shall do all of the
18 following:

19 (i) Identify the geographic area in the state in which the authority
20 intends to operate the program.

21 (ii) Approve a standardized servicing agreement.

22 (iii) Authorize one or more designated officials of the authority
23 to execute and deliver the servicing agreement on behalf of the
24 authority.

25 (B) The authority acknowledges receipt of the resolution
26 described in subparagraph (C) of paragraph (3).

27 (C) The authority may determine that all proceedings were valid
28 and in conformity with the requirements of this paragraph and that
29 finding shall be final and conclusive.

30 (3) The legislative body of the local agency requests the
31 authority to provide funding for its customers through a program
32 established by the authority pursuant to this section by doing all
33 of the following:

34 (A) The legislative body adopts a resolution declaring its
35 intention to request the authority to establish or extend a program
36 to a customer represented by the legislative body, calling for a
37 public hearing that shall be held at least 30 days later and directing
38 the clerk or secretary of the legislative body to publish a notice of
39 the hearing at least five days before the hearing in a newspaper of
40 general circulation in the boundaries of the local agency. If the

1 local agency wishes to pledge its water enterprise revenue as
2 security for the payment of the principal of, and interest and
3 redemption premium on, bonds issued by the authority in the event
4 that efficiency charges are insufficient for those purposes pursuant
5 to paragraph (4) of subdivision (f), the legislative body shall declare
6 that intention in the resolution.

7 (B) The legislative body conducts the noticed public hearing
8 and, after considering the testimony of any interested person,
9 concludes that the program and the proposed pledge of water
10 enterprise revenue, if applicable, would provide significant public
11 benefits in accordance with the criteria specified in Section 6586.

12 (C) The legislative body adopts a resolution that does all of the
13 following:

14 (i) Authorizes the authority to establish or extend a program
15 pursuant to this section within the boundaries of the local agency.

16 (ii) Declares that the operation of the program by the authority
17 in the local agency's geographic boundaries would provide
18 significant public benefits in accordance with the criteria specified
19 in Section 6586.

20 (iii) Approves the standardized servicing agreement and
21 authorizes one or more designated officials of the local agency to
22 execute and deliver the servicing agreement with the authority.

23 (iv) If applicable, approves the pledge of water enterprise
24 revenue as security for the payment of the principal of, and interest
25 and redemption premium on, bonds issued by the authority in the
26 event that efficiency charges are insufficient for those purposes.

27 (v) If applicable, authorizes execution and delivery of one or
28 more pledge agreements to evidence a pledge.

29 (vi) In the resolution, the legislative body may determine that
30 all proceedings were valid and in conformity with the requirements
31 of this section and that finding shall be final and conclusive.

32 (d) (1) ~~Subject to the requirements of Article XIII C or Article~~
33 ~~XIII D of the California Constitution, a~~ A customer shall repay the
34 authority through an efficiency charge on the customer's water
35 bill ~~that is imposed~~ *established* and collected by the local agency
36 or its publicly owned utility. ~~The imposition of duty to pay~~ the
37 efficiency charge shall *arise from and* ~~be made and~~ evidenced by
38 a written agreement ~~between~~ *among* the customer, the authority,
39 and the local agency or its publicly owned utility. ~~The use of the~~
40 ~~proceeds of the efficiency charge to repay the costs of the efficiency~~

1 ~~improvement constitutes a “water” service, as defined in~~
2 ~~subdivision (m) of Section 53750.~~

3 (2) The written agreement shall include all of the following:

4 (A) An agreement by the customer to pay an efficiency charge
5 for the period and in the amount specified in the agreement unless
6 the efficiency charge is prepaid in the manner set forth in the
7 agreement. The period designated for repayment shall not exceed
8 the estimated useful life of the funded efficiency improvements.

9 (B) A description of the financial calculation, formula, or other
10 method that the authority used to determine the efficiency charge.
11 The efficiency charge may include a component for reasonable
12 administrative expenses incurred by the local agency or its publicly
13 owned utility and the authority in connection with the program
14 and the funding.

15 (C) A description of the efficiency improvement funded with
16 the efficiency charge. A determination in the agreement that an
17 improvement is an efficiency improvement shall be final and
18 conclusive.

19 (D) A representation by the customer that the customer intends
20 to acquire, install, or repair and use the efficiency improvement
21 on the customer’s property for the useful life of the efficiency
22 improvement. Any failure by the customer to acquire, install, or
23 repair and use the efficiency improvement on the customer’s
24 property for the useful life of the efficiency improvement shall not
25 affect the customer’s obligation to pay the efficiency charge as set
26 forth in the agreement.

27 ~~(3) Notwithstanding any other provision of this section, an~~
28 ~~efficiency charge shall not exceed the maximum rate permitted~~
29 ~~under Article XIII D of the California Constitution.~~

30 ~~(4)~~

31 (3) The timely and complete payment of an efficiency charge
32 by a customer that has agreed to pay an efficiency charge may be
33 a condition of receiving water service from the local agency or its
34 publicly owned utility, and a local agency and its publicly owned
35 utility are authorized to use their established collection policies
36 and all rights and remedies provided by law to enforce payment
37 and collection of the efficiency charge. A person liable for an
38 efficiency charge shall not be entitled or authorized to withhold
39 payment, in whole or in part, of the efficiency charge for any
40 reason.

1 ~~(5)~~

2 (4) A customer's obligation to pay the efficiency charge shall
3 run with title to the customer property on which the efficiency
4 improvement is located until repaid in full. A local agency or its
5 publicly owned utility shall record notice of an efficiency charge
6 in the records of the county recorder of the county in which the
7 customer's property is located and that notice shall impart notice
8 of the efficiency charge to all persons. Any failure by the local
9 agency or its publicly owned utility to record that notice shall not
10 excuse an owner of the customer property, on which the funded
11 improvement is located, from the obligation to pay the efficiency
12 charge.

13 ~~(6)~~

14 (5) Because the efficiency charge is a voluntary charge that will
15 be made pursuant to a written agreement between the customer,
16 the authority, and the local agency or its publicly owned utility,
17 the Legislature finds and declares that voluntary efficiency charges
18 under this section are not taxes, assessments, fees, or charges for
19 the purposes of Articles XIII C and XIII D of the California
20 Constitution and therefore the provisions of Articles XIII C and
21 XIII D and Article 4.6 (commencing with Section 53750) of
22 Chapter 4 of Part 1 of Division 2 of Title 5 are not applicable to
23 voluntary efficiency charges levied pursuant to this section.
24 Furthermore, a program established pursuant to this section
25 provides a "water" service, as defined in subdivision (m) of Section
26 53750.

27 (e) (1) The authority and a local agency or its publicly owned
28 utility shall enter into a servicing agreement for the collection of
29 one or more efficiency charges and the local agency or its publicly
30 owned utility shall act as a servicing agent for purposes of
31 collecting the efficiency charge.

32 (2) Moneys collected as an efficiency charge by the local agency
33 or its publicly owned utility, acting as a servicing agent on behalf
34 of the authority, shall be held in trust for the exclusive benefit of
35 the persons entitled to the financing costs to be paid, directly or
36 indirectly, from the efficiency charge and shall not lose their
37 character as revenues of the authority because the local agency or
38 its publicly owned utility possesses them.

39 (3) In the servicing agreement, the local agency or its publicly
40 owned utility shall contract with the authority that the local agency

1 or its publicly owned utility will continue to operate its publicly
2 owned utility system to provide service to its customers, will, as
3 servicer, collect the efficiency charge for the benefit and account
4 of the authority and, if applicable, the beneficiaries of the pledge
5 of the efficiency charge, and will account for and remit these
6 amounts to, or for the account of, the authority.

7 (4) The servicing agreement shall provide that the obligation to
8 pay the efficiency charge shall run with title to the customer
9 property on which the efficiency improvement is located until the
10 authority is fully repaid. When the property is not owner occupied,
11 the servicing agreement shall provide that the obligation to pay
12 the efficiency charge appear in the terms through which the
13 customer leases or licenses the property for occupancy.

14 (5) In the servicing agreement, the local agency or its publicly
15 owned utility may agree that the timely and complete payment of
16 all efficiency charges by a customer that has agreed to pay an
17 efficiency charge shall be a condition of receiving service from
18 the publicly owned utility, and the local agency or its publicly
19 owned utility shall use their established collection policies and all
20 rights and remedies provided by law to enforce payment and
21 collection of the efficiency charge.

22 (6) In the servicing agreement, the local agency or its publicly
23 owned utility shall agree that in the event of default by the local
24 agency or its publicly owned utility in payment of revenues arising
25 with respect to the efficiency charge, the authority, upon the
26 application by the beneficiaries of the authority's pledge described
27 in this section, and without limiting any other remedies available
28 to the beneficiaries by reason of the default, shall order the
29 sequestration and payment to the beneficiaries of revenues arising
30 with respect to the efficiency charge.

31 (f) (1) The authority may issue one or more bonds for the
32 purpose of providing funds for the acquisition, installation, and
33 repair of an efficiency improvement on customer property pursuant
34 to this section.

35 (2) An authority issuing a bond shall include in its preliminary
36 notice and final report for the bonds submitted to the California
37 Debt and Investment Advisory Commission pursuant to Section
38 8855 a statement that the bond is being issued pursuant to this
39 section.

1 (3) (A) The authority may, pursuant to Section 5451, pledge
2 one or more efficiency charges as security for the bonds issued
3 pursuant to this section. Revenue from an efficiency charge shall
4 be deemed special revenue of the authority and shall not constitute
5 revenue of the local agency or its publicly owned utility for any
6 purpose, including without limitation any dedication, commitment,
7 or pledge of revenue, receipts, or other income that the local agency
8 or its publicly owned utility has made or will make for the security
9 of any of its obligations.

10 (B) The validity and relative priority of a pledge created or
11 authorized under this section is not defeated or adversely affected
12 by the commingling of efficiency charge revenue with other
13 moneys collected by a local agency or its publicly owned utility.

14 (4) ~~Subject to the requirements of Article XIII C or Article XIII~~
15 ~~D of the California Constitution, a~~ A local agency may pledge
16 water enterprise revenue as security for the payment of the principal
17 of, and interest and redemption premium on, bonds issued by the
18 authority ~~in the event that~~ *if* efficiency charges are insufficient for
19 ~~those purposes; that purpose,~~ and may execute one or more pledge
20 ~~agreements, which shall be made~~ *agreements* pursuant to Section
21 ~~5451, 5451~~ for the benefit of the authority or for the exclusive
22 benefit of the persons entitled to the financing costs to be paid
23 from the efficiency charges.

24 (g) If a local agency for which bonds have been issued and
25 remain outstanding ceases to operate a water utility, either directly
26 or through its publicly owned utility, references in this section to
27 the local agency or to its publicly owned utility shall be deemed
28 to refer to the entity providing water utility services in lieu of the
29 local agency and that entity shall assume and perform all
30 obligations of the local agency or its publicly owned utility required
31 by this section and the servicing agreement with the authority while
32 the bonds remain outstanding.

33 (h) If the local agency, its publicly owned utility, and the
34 authority have complied with the procedures set forth in this
35 section, they shall not be required to comply with Section 6586.5.

36 (i) The provisions of this section are severable. If any provision
37 of this section or its application is held invalid, that invalidity shall

- 1 not affect other provisions or applications that can be given effect
- 2 without the invalid provision or application.

O